

FCC MAIL SECTION

Aug 17 4 43 PM '92
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

DA 92-1121

In the Matter of)
)
Commission Requirements for Cost)
Support Material to be Filed with)
Open Network Architecture)
Access Tariffs)

CC Docket No. 92-91 ✓

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 1992; Released: August 14, 1992

By the Deputy Chief (Policy), Common Carrier Bureau:

1. This Order revises the schedule for filings in this investigation, in response to a Motion for Extension of Time filed by American Telephone and Telegraph Company (AT&T) on August 7, 1992. The revised schedule will enable parties to comment in a unified pleading cycle on (i) the BOCs' direct cases; (ii) the cost models used to develop investment figures for ONA services; (iii) the adequacy of the redacted cost models and the discretionary disclosure procedures developed to enable comment on sensitive aspects of cost support; and (iv) the independent auditor's review of the cost models. ¹

I. BACKGROUND

2. On January 31, 1992, the Common Carrier Bureau (Bureau) initiated an investigation into open network architecture (ONA) tariffs filed by Bell Operating Companies (BOCs). ² In the companion SCIS Disclosure Order, the

¹ The BOCs develop cost support material for ONA services based in part on investment figures generated by the Switching Cost Information System (SCIS), a computer model administered by Bell Communications Research (Bellcore) that quantifies the engineering processes of a switching office in order to apportion switch capacity and cost among the features and functions the switch provides. US West uses a model that it calls Switching Cost Model (SCM), which US West alleges to be similar to SCIS. Our comments and decisions on SCIS made herein also specifically apply to the US West SCM, unless noted otherwise.

² Bell Atlantic Telephone Companies, et al., Open Network Architecture Tariffs, CC Docket No. 92-91, 7 FCC Rcd 1512 (Com.Car.Bur. 1992) (ONA Investigation Order). The Bell Operating Companies are the Ameritech Operating Companies, (Ameritech), Bell Atlantic Telephone Companies (Bell Atlantic), BellSouth Telephone Companies (BellSouth), New York Telephone Company and New

Bureau determined that Switching Cost Information System (SCIS) software and documentation, and other, similar software used to develop cost support materials for Open Network Architecture (ONA) tariffs, should be disclosed to the maximum extent, consistent with safeguarding the proprietary status of these materials. The Bureau also determined that certain proprietary aspects of the BOCs' computer models and related switch vendor data cannot practicably be disclosed on the public record without compromising the proprietary nature of the data.³ The SCIS Disclosure Order thus ordered the BOCs to make available to intervenors a version of SCIS with the most sensitive proprietary information redacted from the model and related documentation. The Order also established procedures, including a prescribed nondisclosure agreement, by which parties to this investigation were to be provided access to this redacted version of SCIS. The same Order required the BOCs to retain an independent auditor to examine the SCIS model design and perform sensitivity analyses with the model, and report those results to the Commission.

3. In response to the SCIS Disclosure Order, Bellcore on February 20, 1992 filed SCIS materials with the Commission, with proprietary materials redacted. Intervenors alleged that the redacted materials filed by the BOCs to comply with instructions in that Order were seriously deficient, and that the resulting delay in obtaining more useful access to cost support constrained intervenors' informed preparation of comments directed to the BOCs' direct cases in this Docket. Acting on a request from MCI, supported by Ad Hoc and AT&T, the Bureau on June 9, 1992 extended the date for comments on direct cases until August 17, 1992.⁴

England Telephone and Telegraph Company (NYNEX), Pacific Bell, Nevada Bell, Southwestern Bell Telephone Company (Southwestern Bell), and US West Communications, Inc. (US West). The Bureau had previously initiated an investigation into Ameritech's ONA tariffs, in December 1991. Ameritech Operating Companies, Revisions to Tariff F.C.C. No. 2, Open Network Architecture, Memorandum Opinion and Order, 7 FCC Rcd 257 (Com.Car.Bur. 1991) (Ameritech ONA Tariff Order), modified by Ameritech Operating Companies, 7 FCC Rcd 948 (Com.Car.Bur. 1992). A subsequent order designated supplemental issues for investigation arising from Nevada Bell's Transmittal Nos. 130 and 132. Nevada Bell, Open Network Architecture Tariffs, CC Docket No. 92-91, 7 FCC Rcd 4051 (Com.Car.Bur. 1992). The filing schedule for those supplemental issues is consolidated by this Order as noted in para. 13, infra.

³ 7 FCC Rcd 1526 (Com.Car.Bur. 1992). The Bureau had determined in a prior Order that the materials at issue were exempt from mandatory disclosure under the Freedom of Information Act. Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, Order, 7 FCC Rcd 521 (Com. Car. Bur. 1991) (SCIS In Camera Order), affirmed Allnet Communications Services, Inc., FOIA Control No. 92-226, FCC 92-356, released Aug. 3, 1992.

⁴ Order, 7 FCC Rcd 4106 (Com.Car.Bur. 1992).

II. DISCUSSION

4. Since the Bureau released our order extending the pleading cycle in this proceeding, a number of events have occurred that require us to again amend our schedule for this investigation. First, based on our initial review of the redacted SCIS materials and the intervenors' view of the usefulness of the material, the Bureau informally encouraged vendors and Bellcore to work toward an alternative redaction approach within the parameters set by the SCIS Disclosure Order. On June 25, 1992, Bellcore personnel explained at a meeting with Bureau staff and switch vendor representatives a proposed second-generation redaction of SCIS software and related documentation (Redaction II), based on a revised approach developed by BOCs and affected switch vendors. The ex parte statement submitted by Bellcore July 13, 1992, describes the main elements of this altered approach.

5. Bellcore subsequently filed the Redaction II software and related documentation on July 31, 1992, with a request for confidential treatment. It simultaneously offered these materials to intervenors who agree to use Bellcore's protective procedures by submitting a Notice of Compliance.⁵ Under these procedures the second-generation redaction of SCIS software will be made available for intervenors' inspection, including sensitivity analysis studies, at Bellcore premises during the period from August 4 to September 14, 1992.⁶

6. Also on July 31, 1992, US West filed a second-generation redaction of the SCM model and related documentation for the Commission's in camera review, and invited intervening parties to review these materials provided that: (1) they had previously signed the nondisclosure agreement included in the SCIS Disclosure Order; (2) had returned the Redaction I materials to US West; and (3) agreed to the terms of the Notice of Compliance attached to the July 31 cover letter, which US West also sent to all parties of record. US West attached a proposed schedule for access to the SCM software and documentation at its Washington, D.C. offices, over the period from August 19 to August 26, 1992.⁷

7. The second-generation redactions and associated protective disclosure procedures that are now proposed by the BOCs differ significantly from the redactions originally developed in response to the SCIS Disclosure Order. The SCIS documentation is more fully revealed under Redaction II than under the first version. Vendor-specific nomenclature, generic switch architecture diagrams, and generic descriptions of SCIS methodology, which were redacted in the first effort, are disclosed in Redaction II. As to the SCIS software itself, the second redaction appears to enable intervenors to use the

⁵ Bellcore sent all parties to the proceeding a copy of the July 31, 1992 cover letter and compliance procedure.

⁶ Letter from J. Britt, Bellcore, to S. Wiggins, Tariff Division, Aug. 11, 1992. A copy of this letter was sent to parties of record by facsimile.

⁷ US West's procedure is contingent upon agreement by switch vendors that US West's redacted SCM materials adequately safeguard their proprietary interests.

software to perform actual SCIS investment studies for a specific switch technology that reasonably resemble the SCIS investment studies on which the BOCs relied in their rate development process. In contrast, the previous redaction's use of randomized vendor data within the SCIS software precluded even an approximate replication of investment studies relied on to develop ONA service rates.

8. The inclusion of actual vendor data in the software, however, renders physical distribution of the software to intervenors significantly more risky for switch vendors' competitive interests. Bellcore and the vendors have therefore established different procedures for intervenors to use the software than were described in the SCIS Disclosure Order, e.g., the software will be available only at Bellcore locations in Washington, D.C., and Livingston, N.J.

9. Finally, Arthur Andersen & Co. SC (Andersen) on July 31, 1992 filed the redacted version of the independent auditor's report required by the SCIS Disclosure Order, with a request for confidentiality, and specified procedures for distribution of the report to parties who had signed the nondisclosure agreement included in the SCIS Disclosure Order.⁸ Andersen also sent its cover letter to all parties of record.

10. As a result of these developments, we again modify the schedule for investigation of BOC ONA rates as follows. In order to give intervenors time to analyze Redaction II, we extend the time for comments in the investigation to October 16, 1992. Replies shall be due November 13, 1992. Parties may comment on the issues designated for investigation, the BOCs' direct cases, and the cost models used to develop investment figures for ONA services. We also invite comment on the adequacy of discretionary disclosure procedures for Redaction II, including that method's balancing of the competing interests in public participation and safeguarding proprietary data that were discussed in the SCIS Disclosure Order, and any comments on the independent auditor's review. Any questions parties recommend that the Commission ask the independent auditor shall also be filed October 16, 1992.⁹

11. We therefore grant AT&T's motion for extension of time to the extent indicated herein, and clarify the issues for discussion on our own motion. We do not anticipate granting further extensions of time in this proceeding.

⁸ Andersen submitted its unredacted report on July 22, 1992, for review by Commission staff.

⁹ Intervenors' queries involving cost support materials determined or alleged to be competitively sensitive should be filed separately, with a request for confidential treatment, no later than October 16, 1992.

III. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that the Motion for Extension of Time to file Opposition to Direct Cases, filed by American Telephone and Telegraph Company August 7, 1992, IS GRANTED to the extent indicated herein.

13. IT IS FURTHER ORDERED that the supplemental issues designated for investigation with respect to Nevada Bell's ONA services shall be consolidated with the issues generally designated by the ONA Investigation Order, and shall be subject to the identical pleading cycle.

14. IT IS FURTHER ORDERED that intervenors SHALL FILE public comments on the BOCs' direct cases, including all materials obtained under discretionary disclosure procedures, no later than October 16, 1992. BOCs SHALL FILE REPLIES to the comments on direct cases in the captioned proceeding, no later than November 13, 1992.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen Levitz

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Deputy Chief (Policy)
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